No. 94-1474

IN THE
Supreme Court of the United States
OCTOBER TERM, 1995

STATE OF IDAHO, *et al.*,
Petitioners,
v.
COEUR D'ALENE TRIBE, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF THE COUNCIL OF STATE GOVERNMENTS, NATIONAL GOVERNORS' ASSOCIATION, NATIONAL LEAGUE OF CITIES, INTERNATIONAL CITY/COUNTY MANAGEMENT ASSOCIATION, U.S. CONFERENCE OF MAYORS, AND NATIONAL ASSOCIATION OF COUNTIES AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Amici will address the following question:

Whether the Eleventh Amendment prohibits a federal court from exercising jurisdiction over an action for declaratory and injunctive relief which would cloud a State's title to property.

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INTEREST OF THE *AMICI CURIAE*

Amici, organizations whose members include state and local governments and officials throughout the United States, have a compelling interest in legal issues that affect state and local governments. The

Eleventh Amendment is one of the principal constitutional protections of state sovereignty. This case therefore presents an issue of fundamental importance to *amici* and their members—whether notwithstanding the Eleventh Amendment's prohibition against a federal court adjudicating a State's interest in property absent its consent, federal courts can grant declaratory and injunctive relief against state officials which has the practical effect of conveying a portion of the State's property interest.

Invoking *Ex Parte Young*, 209 U.S. 123 (1908), the court of appeals sanctioned the award of declaratory and injunctive relief against state officials even though it would result in neither the State nor the Tribe "hold[ing] unclouded title to the property." Pet. App. 22a. Indeed, the granting of the relief authorized by the court of appeals might well prompt inconsistent judgments, which would turn the disputed area into a no man's land and prevent this controversy from ever being conclusively resolved. Even if this suit could be fairly characterized as not adjudicating the State's interest in property, a suit brought under the *Young* doctrine remains subject to traditional equitable principles. These principles require the federal courts to remit the Tribe to the quiet title remedy available in the state courts, which can provide a complete resolution of this dispute.

Because of the importance of this issue to *amici* and their members, this brief is submitted to assist the Court in its resolution of the case.[1]

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[1] The parties have consented to the filing of this brief *amicus curiae*. Letters indicating their consent have been filed with the Clerk of the Court.

STATEMENT

The Coeur D'Alene Tribe of Idaho brought this action in federal district court against the State of Idaho, its agencies and various state officials seeking to quiet title in the Tribe to the beds, banks, and waters of all navigable watercourses located within the boundaries of the Tribe's reservation as established by an 1873 executive order. *See* Pet. App. 30a. The Tribe's complaint sought an order quieting the Tribe's title in the disputed area as well as declaratory relief establishing the Tribe's right "to the exclusive use and occupancy and the right to quiet enjoyment" of the disputed area and the invalidity of various Idaho statutes and ordinances applicable therein. Opp. App. 12a-14a. Finally, the Tribe sought to enjoin the State, its agencies and officials "from regulating, permitting or taking any action in violation of the [Tribe's] rights of exclusive use and occupancy" in the disputed area. *Id.* at 14a.

The State moved to dismiss the Tribe's suit as barred by the Eleventh Amendment. Pet. App. 31a. The district court granted the motion, dismissing the Tribe's action in its entirety. The court first held that the Eleventh Amendment barred the Tribe's claims against the State and its agencies. *See id.* at 32a-37a. With respect to the Tribe's claims against the state officials, the court concluded "that the declaratory relief sought by the Tribe *would* have the same effect as an award of damages or restitution." *Id.* at 39a. Moreover, the Tribe, "by also suing the state officials to quiet title, and for declaratory judgment . . . is essentially attempting to execute an 'end run' around" the Eleventh Amendment's prohibition against suits in federal court seeking retroactive relief from a State. *Id.* (citing *Edelman v.*

Jordan, 415 U.S. 651 (1974)). Finally, with respect to the Tribe's claim for injunctive relief against the officials, the court reasoned that it was not within the exception created by *Ex Parte Young*, because the State "has been in rightful possession of all of the lands and waters at issue in this case since it entered the Union in 1890." Pet. App. 47a.

The court of appeals affirmed in part and reversed in part. To the extent the Tribe sought relief against the State and its agencies, the court upheld the district court's determination that the claims were barred by the Eleventh Amendment. *Id.* at 4a-10a. The court also held that the Tribe's quiet title claim against the state officials was barred by the Eleventh Amendment. *Id.* at 4a. The court held, however, that the Tribe was entitled to "a determination under federal law of [its] right to possess, use, and control the beds, banks, and waters of navigable waterways within the Coeur D'Alene Reservation in the future." *Id.* at 22a. While the court acknowledged that it could not adjudicate the State's interest in the disputed area, it further reasoned that "to the extent . . . the declaratory and injunctive relief binds state officials in accordance with what the district court finds to be the Tribe's right to the property, it is allowable." *Id.* Reasoning that "[b]ecause the state is unable to act in violation of federal law," the court concluded that "declaratory relief that determines what federal law *is* and requires state officials to act accordingly cannot be considered relief against the state." *Id.*

The court of appeals acknowledged "that if the Tribe ultimately prevails on the merits of this case, neither Idaho nor the Tribe will hold unclouded title to the property." *Id.* It nonetheless reinstated the Tribe's claims for declaratory and injunctive relief

against the officials, holding that under *Ex Parte Young* the federal courts "may not decline jurisdiction to the extent that it exists." *Id.*

SUMMARY OF ARGUMENT

1. The court of appeals' holding violates the Eleventh Amendment, which prohibits a federal court from adjudicating a State's interest in property without its consent. *See Florida Dept. of State v. Treasure Salvors, Inc.*, 458 U.S. 670, 699-700 (1982). The Tribe's remaining claims are only nominally against the State's officials; " 'the state is the real, substantial party in interest.' " *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 101 (1984) (quoting *Ford Motor Co. v. Department of Treas. of Indiana*, 323 U.S. 459, 464 (1945)).

The court of appeals held that the Tribe could seek a declaratory judgment that it has the "right to possess, use, and control" the disputed area and "injunctive relief bind[ing] state officials in accordance with what the district court finds to be the Tribe's right to the property." Pet. App. 22a. The granting of such relief would violate the Eleventh Amendment, which bars even a suit brought against state officials for injunctive relief "when 'the state is the real, substantial party in interest.' " *Pennhurst*, 465 U.S. at 101 (quoting *Ford Motor*, 323 U.S. at 464). As the Tribe itself characterizes its claim, this is a dispute over the ownership of the beds, banks, and waters of navigable waters located within the boundaries of the 1873 reservation. *See* Pet. App. 3a. The various state officials sued by the Tribe have been named as defendants solely because of their duties under Idaho law in administering the State's ownership in trust of the disputed area. The

Tribe's suit is thus only nominally against the state officials; the State is the real, substantial party in interest.

The nature of the relief sanctioned by the court of appeals does not alter this conclusion. A federal court's declaratory judgment that the Tribe has the "right to possess, use and control" the disputed area coupled with injunctive relief binding state officials in accordance with the Tribe's right to the property, amounts to no less than the granting of equitable ownership of the disputed area to the Tribe. Under such a decree, the Tribe would be able to exclude the public from use of the area. The federal court's decree would thereby divest the State and its people of their equitable interest in the property in violation of the Eleventh Amendment.

2. *Ex Parte Young* and other cases in which this Court has sanctioned the use of fictional suits against governmental officials to provide a remedy for the deprivation of property do not support the court of appeals' holding. In more recent cases, this Court has explained that the use of fictional suits against governmental officials was necessitated by the absence of a remedy against the sovereign itself. *See, e.g., Malone v. Bowdoin*, 369 U.S. 643 (1962). The rationale of these cases is that unless such suits were deemed to be against the officials and not the sovereigns, there would have been no effective remedy for the illegal deprivation of property. Idaho, however, has waived its sovereign immunity from quiet title actions brought in state court. The availability of this remedy renders unnecessary the sanctioning of a suit against the State's officials.

Moreover, the court of appeals' assertion that *Ex Parte Young* requires a federal court to exercise

jurisdiction "to the extent that it exists" (Pet. App. 22a-23a), rests on the erroneous premise that a federal court lacks discretion to refuse to hear the Tribe's claims for equitable relief. This Court has recognized, however, that a suit brought under the *Young* doctrine remains subject to traditional equitable principles, which in a proper case may require a federal court to decline to exercise its jurisdiction. *See, e.g., Younger v. Harris*, 401 U.S. 37 (1971).

The exercise of federal court jurisdiction over the Tribe's claims for declaratory and injunctive relief would violate fundamental principles of equity jurisprudence. As the court of appeals acknowledged, "if the Tribe ultimately prevails on the merits of this case, neither Idaho nor the Tribe will hold unclouded title to the property." Pet. App. 22a. The exercise of federal jurisdiction over the Tribe's claims could turn the disputed area into a no man's land as the Tribe asserts its right under the federal court's equitable decree to exclude the public from the area, and members of the public assert their right to use the area under the State's legal title.

Indeed, the exercise of federal jurisdiction might prevent there ever being a conclusive resolution of this dispute. As the court of appeals acknowledged, a judgment in the Tribe's favor against the State's officials, while granting the incidents of equitable title, cannot bind the State. The State would be fully within its sovereign prerogative to bring suit in its own courts, which are bound to follow only the determinations of federal law made by this Court and not the lower federal courts. The State might thus obtain a judgment "quieting its title" which, at its core, conflicts with the judgment rendered by the federal courts. Absent this Court's granting review

and vacating one of these judgments, there may never be a definitive resolution of the dispute.

The exercise of federal jurisdiction over the Tribe's claims thus presents a very substantial likelihood of causing irreparable harm to both the Tribe and the State. Equitable principles require that the Tribe be remitted to the quiet title remedy which is available in the Idaho courts.

ARGUMENT

THE ELEVENTH AMENDMENT BARS THE TRIBE'S SUIT

This Court has long recognized that the Eleventh Amendment precludes a federal court from adjudicating a State's interest in property absent its consent. *See Florida Dept. of State v. Treasure Salvors, Inc.*, 458 U.S. 670, 699-700 (1982); *In re New York (II)*, 256 U.S. 503, 511 (1921). While the court of appeals acknowledged this fundamental principle (*see* Pet. App. 16a), it nonetheless held that, under *Ex Parte Young*, 209 U.S. 123 (1908), the Tribe could seek a declaratory judgment determining its "right to possess, use, and control the beds, banks, and waters of navigable waterways" and "injunctive relief bind[ing] state officials in accordance with what the district court finds to be the Tribe's right to the property." Pet. App. 22a. Most remarkably, the court sanctioned such relief even though it "recognize[d] that if the Tribe ultimately prevails on the merits of this case, neither Idaho nor the Tribe will hold unclouded title to the property." *Id.*

It is clear that in the event the Tribe prevails and Idaho no longer "hold[s] unclouded title to the property," *id.*, the lower federal courts will have adjudicated at least a portion of the State's interest in

property absent its consent—in plain violation of the Eleventh Amendment. But even if one were to accept the view that allowing this suit to go forward does not violate the Eleventh Amendment, the court of appeals' sanctioning of a suit against the State under the fiction of *Ex Parte Young* is unwarranted and unwise.

As explained below, the court of appeals' holding is an invitation to uncertainty and duplicative litigation. Indeed, federal court intervention, through the fiction of *Ex Parte Young*, might well result in there never being a conclusive resolution of this dispute, a grave consequence for both the Tribe and the people of Idaho. Contrary to the reasoning of the court of appeals that it could "not decline jurisdiction to the extent that it exists," *id.*, courts of equity have long exercised a reasoned discretion in deciding whether to adjudicate a dispute within their jurisdiction. *See, e.g.*, David L. Shapiro, *Jurisdiction And Discretion*, 60 N.Y.U. L. Rev. 543, 548-49 (1985). The court of appeals' sanctioning of a suit against the State under the fiction of *Ex Parte Young* is inappropriate under traditional equitable principles. Moreover, it is unnecessary because Idaho has waived its immunity from quiet title actions brought in its own courts. The judgment of the court of appeals should therefore be reversed.

I. THE ELEVENTH AMENDMENT BARS A FEDERAL COURT FROM ADJUDICATING A STATE'S INTEREST IN PROPERTY

A. This Court has long " 'understood the Eleventh Amendment to stand not so much for what it says, but for the presupposition . . . which it confirms.' " *Seminole Tribe of Florida v. Florida*, 116 S.Ct. 1114,

1122 (1996) (quoting *Blatchford v. Native Village of Noatak*, 501 U.S. 775, 779 (1991)). As the Court recently reaffirmed, "[t]hat presupposition . . . has two parts: first, that each State is a sovereign entity in our federal system; and second, that '"[i]t is inherent in the nature of sovereignty not to be amenable to the suit of an individual without its consent."'" *Id.* (quoting *Hans v. Louisiana*, 134 U.S. 1, 13 (1890) (quoting *The Federalist* No. 81, p. 487 (C. Rossiter ed. 1961) (A. Hamilton))). *See also Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 98 (1984) (The Eleventh Amendment's "greater significance lies in its affirmation that the fundamental principle of sovereign immunity limits the grant of judicial authority in Art. III.").

This limitation on the authority of a federal court to summon before it one of the States is fully applicable where, as here, an entity other than the United States or one of its sister States brings a suit. *See Blatchford*, 501 U.S. at 779-82. It applies not only when the relief sought is an award of damages from the State, *see Edelman v. Jordan*, 415 U.S. 651, 668-71 (1974), but also to a suit against a State seeking equitable relief. *See Pennhurst*, 465 U.S. at 100-01; *Missouri v. Fiske*, 290 U.S. 18, 27 (1933). It thus applies to every suit which seeks to adjudicate a State's interest in property, whether it is an action for damages or for equitable relief. *See Treasure Salvors*, 458 U.S. at 699-700; *In re New York (II)*, 256 U.S. at 511.

The Court has further held that "[t]he Eleventh Amendment bars a suit against state officials when 'the state is the real, substantial party in interest.'" *Pennhurst*, 465 U.S. at 101 (quoting *Ford Motor Co. v. Department of Treas. of Indiana*, 323 U.S. 459,

464 (1945)). "And, as when the State itself is named as the defendant, a suit against state officials that is in fact a suit against a State is barred regardless of whether it seeks damages or injunctive relief." *Id.* at 101-02 (citing *Cory v. White*, 457 U.S. 85, 91 (1982)).

The Court has excepted from the bar of the Eleventh Amendment a suit for prospective relief challenging the conduct of a state official as violative of federal law. *See Ex Parte Young*, 209 U.S. at 159-60. But as the Court has made clear, "the theory of *Young* has not been provided an expansive interpretation." *Pennhurst*, 465 U.S. at 102; *see also Seminole Tribe*, 116 S.Ct. at 1132-33. A suit brought under the *Young* doctrine remains subject to traditional equitable principles, which in a proper case may require a federal court to decline to exercise its jurisdiction. *See Younger v. Harris*, 401 U.S. 37, 43-46 (1971); *Fenner v. Boykin*, 271 U.S. 240, 243-44 (1926); Shapiro, Jurisdiction And Discretion, 60 N.Y.U. L. Rev. at 549.

B. These principles compel the dismissal of the Tribe's claims for declaratory and injunctive relief, regardless of whether the suit is deemed to be a suit against the State or an action under *Ex Parte Young*. As the Tribe's complaint characterizes its claim, this is a dispute over "the ownership of the beds and banks and all waters of all navigable water courses within the 1873 Coeur D'Alene reservation boundary." Opp. App. 3a. The various state officials sued by the Tribe have been named as defendants solely because of their duties under Idaho law in administering the State's ownership in trust of the disputed areas. *See id.* at 5a-6a (Complaint). The Tribe's suit is only nominally against the State's

officials; the State is plainly "'the real, substantial party in interest.'" *Pennhurst*, 465 U.S. at 101 (quoting *Ford Motor*, 323 U.S. at 464).

The nature of the relief sanctioned by the court of appeals does not alter this conclusion. A federal court's declaratory judgment that the Tribe has the "right to possess, use and control the beds, banks, and waters of navigable waterways" within the disputed area and "injunctive relief bind[ing] state officials in accordance with . . . the Tribe's right to the property" (Pet. App. 22a), amounts to no less than the granting of the equitable ownership of the disputed area to the Tribe. As a leading authority explains:

> The chief incidents of the ownership of property are the right to its possession, the right to its use, and the right to its enjoyment, according to the owner's taste and wishes, free from unreasonable interference, usually to the exclusion of all others. The power to prevent members of the public from using property in a manner contrary to the wishes of the owner is part of the rights traditionally associated with the ownership of private property.

73 C.J.S. *Property* § 27 (1983) (citations omitted).

If granted by the district court, the relief sanctioned by the court of appeals would effectively revoke the public trust which the State maintains on behalf of all people, including the members of the Tribe, over the disputed area. *See Illinois Central R.R. Co. v. Illinois*, 146 U.S. 387 (1892). Even a decree limited to declaring "the Tribe to be the owner of the property against all claimants except the State" (Pet. App. 22a), would result in the Tribe being able to exclude the public from the use of the area and its waters. This is because the injunctive

component of the decree—binding the State's officials in accordance with the Tribe's rights in the property—would prohibit state officials from protecting the public in its use and enjoyment of it. It is obvious that such an order, binding on the officials who administer the State's lands in trust for its people and which effectively grants the Tribe equitable title to the disputed area, adjudicates a substantial, if not the most important, portion of the State's interest in property. Indeed, the court of appeals' recognition that in the event this relief was granted, the State would no longer "hold unclouded title to the property," *id.* at 22a, belies the notion that such an order does not adjudicate the State's interest in property. The "essential nature and effect of the proceeding," *Ford Motor*, 323 U.S. at 464, is to divest the State and its people of their equitable interest in the property.[2]

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[2] The court of appeals asserted that the declaratory and injunctive relief it sanctioned was permissible under the Eleventh Amendment because it "would not compensate for past violations of federal law, but would instead preclude future violations." Pet. App. 21a. This Court's cases make clear, however, that a federal court must examine a remedy's practical effect in determining whether it violates the Eleventh Amendment. *See, e.g., Green v. Mansour*, 474 U.S. 64, 73 (1985) (invalidating issuance of declaratory judgment because it "would have much the same effect as a full-fledged award of damages or restitution by the federal court, the latter kinds of relief being of course prohibited by the Eleventh Amendment"); *Edelman*, 415 U.S. at 668 (invalidating an award of "equitable restitution" because "it is in practical effect indistinguishable from an award of damages against the State"). Because the declaratory and injunctive relief sanctioned by the court of appeals has the practical effect of granting equitable title to the Tribe, it divests the State of a property interest. It is accordingly barred by the Eleventh

The Tribe's claims for declaratory and injunctive relief are thus only nominally against the State's officials, *cf. In re New York (I)*, 256 U.S. 490, 501-02 (1921); rather, "'the [S]tate is the real, substantial party in interest.'" *Pennhurst*, 465 U.S. at 101 (quoting *Ford Motor*, 323 U.S. at 464). Because the Tribe's suit seeks to adjudicate the State's interest in its property and Idaho has not waived its immunity from such a suit in the federal courts, it is barred by the Eleventh Amendment. *See Treasure Salvors*, 458 U.S. at 699-700; *In re New York (II)*, 256 U.S. at 511.

II. THE EXERCISE OF FEDERAL JURISDICTION OVER THE TRIBE'S CLAIMS FOR DECLARATORY AND INJUNCTIVE RELIEF WOULD VIOLATE SETTLED PRINCIPLES OF EQUITY JURISPRUDENCE AND COULD HAVE HIGHLY DISRUPTIVE CONSEQUENCES

Ignoring this Court's command that it examine "the essential nature and effect of the proceeding" to determine whether or not the Tribe's suit is a suit against the State, *Ford Motor*, 323 U.S. at 464, the court of appeals invoked the doctrine of *Ex Parte Young* and other fictional devices to subject the State to the Tribe's claims for declaratory and injunctive relief. The court of appeals' holding is unjustifiable and unpersuasive. Indeed, its instruction to the district court that if it "finds that the property at issue belongs to the Tribe pursuant to federal law, it may decree the Tribe to be the owner of the property against all claimants except the State of Idaho and its agencies" (Pet. App. 22a), is extraordinarily problematic. As the court of appeals itself recognized,

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Amendment. *See Treasure Salvors*, 458 U.S. at 699-700; *In re New York (II)*, 256 U.S. at 511.

"if the Tribe ultimately prevails on the merits of this case, neither Idaho nor the Tribe will hold unclouded title to the property." *Id.*

The court of appeals' approach has the very real potential to turn the disputed area into a veritable no man's land. It is inconsistent with the approach this Court has taken in recent cases and violates settled principles of equity jurisprudence. To the extent the Tribe's suit establishes a violation of its federal rights, the supremacy of federal law can be vindicated in a suit brought in the Idaho courts which is subject to review by this Court.

A. Because Idaho Provides A Remedy For The Tribe's Claim, The Use Of A Fictional Suit Against The State's Officers Is Unwarranted

As support for its holding, the court of appeals relied principally on *Ex Parte Young*, *Treasure Salvors*, and a line of cases which includes *Tindal v. Wesley*, 167 U.S. 204 (1897). *See* Pet. App. 14a-16a, 19a-23a. These cases do not, however, support the problematic holding of the court of appeals. This Court's rejection of the use of fictional devices to adjudicate the United States' interest in property through suits brought nominally against government officials, *see, e.g., Malone v. Bowdoin*, 369 U.S. 643 (1962); *Larson v. Domestic & Foreign Comm. Corp.*, 337 U.S. 682 (1949), compels the dismissal of the Tribe's claims.

Admittedly, in cases such as *Tindal* and *United States v. Lee*, 106 U.S. 196 (1882), the Court rejected arguments that suits against government officials in possession of property were suits against the sovereign, reasoning that possession of property in violation of law divested the official of the sover-

eign's immunity. *See Tindal*, 167 U.S. at 221-22; *Lee*, 106 U.S. at 218-21. But at the time of these cases, the respective sovereigns, while bound by the terms of the applicable due process clauses, had not waived their immunities. *See, e.g., Malone*, 369 U.S. at 647-48 & n.8; *Larson*, 337 U.S. at 697 nn.17-18. Absent the Court's deeming these suits to be against the officials and not the sovereigns, the plaintiffs would have had no effective remedy for the illegal deprivation of their property. As the *Tindal* Court explained:

> [I]f a State, by its officers, acting under a void statute, should seize for public use the property of a citizen, without making or securing just compensation for him, and thus violate the constitutional provision declaring that no State shall deprive any person of property without due process of law, the citizen is remediless so long as the State, by its agents, chooses to hold his property; for . . . if such agents are sued as individuals, wrongfully in possession, they can bring about the dismissal of the suit by simply informing the court of the official character in which they hold the property thus illegally appropriated.

167 U.S. at 222 (citation omitted).

In subsequent cases, however, the Court has made clear that the approach of *Tindal* and *Lee* is limited to those instances in which the sovereign itself has failed to provide an adequate remedy for the deprivation of a citizen's property. For example, in *Larson*, the Court held that a suit against the War Assets Administrator seeking specific performance of a contract was barred by the doctrine of sovereign immunity notwithstanding that it sought declaratory

and injunctive relief against the official. *See* 337 U.S. at 684-85, 695-705. The Court distinguished *Lee* observing that at the time it was decided, "there clearly was no remedy available by which [Lee] could have obtained compensation for the taking of his land," *id.* at 697 n.17, and that "[o]nly where there is a claim that the holding constitutes an unconstitutional taking of property without just compensation does the Lee case require" a suit against an official to be deemed not to be a suit against the sovereign. *Id.* at 697. Returning to the suit before it, the *Larson* Court noted that "[t]here is no claim that [the administrator's] action constituted an unconstitutional taking," and that "[t]here could not be since the respondent admittedly has a remedy, in a suit for breach of contract, in the Court of Claims." *Id.* at 703 & n.27. The Court accordingly ordered the dismissal of the complaint. *Id.* at 705.

In *Malone*, the plaintiffs brought an action of ejectment against a U.S. Forest Service Officer, asserting their ownership of a parcel of land occupied by the federal government. *See* 369 U.S. at 643-44. The official moved to dismiss on "the ground that the suit was in substance and effect one against the United States, which had not consented to be sued, or waived its immunity from suit." *Id.* at 645. The district court granted the motion but the court of appeals reversed on the authority of *Lee*. *Id.*

This Court reversed, ordering the dismissal of the complaint. In so holding, the Court again observed that, unlike in *Lee*, the "respondents could seek just compensation for the taking of their land by the United States" in the Court of Claims, *id.* at 647 n.8, and that *Lee* "has continuing validity only 'where there is a claim that the holding constitutes an uncon-

stitutional taking of property without just compensation.'" *Id.* at 648 (quoting *Larson*, 337 U.S. at 697). The Court thus concluded that the suit "was rightly dismissed by the District Court as an action which in substance and effect was one against the United States without its consent."[8] *Id.*

As the foregoing demonstrates, where the sovereign provides an adequate remedy for the deprivation of property by its agents, the due process clause is satisfied and there is no need for courts to provide additional remedies through the fictional device of a suit against the sovereign's officials. This principle, which is equally applicable in a suit brought against state officials, *see Tindal*, 167 U.S. at 213, compels the dismissal of the Tribe's remaining claims. Here, while Idaho has not waived its Eleventh Amendment immunity, it has waived its sovereign immunity from a suit to quiet title in its own courts. *See* Idaho Code § 5-328.

The Tribe's boilerplate assertion that it has no adequate remedy at law (*see* Opp. App. 11a (Complaint ¶ 30)), does not negate the fact that it can pursue its quiet title action in the state courts. Nor does the court of appeals' apparent belief that a State's pay-

[8] More recently, this Court ordered the dismissal, on sovereign immunity grounds, of a suit for declaratory and injunctive relief brought by North Dakota against federal officials which sought to adjudicate the federal government's ownership interest in the Little Missouri River. *See Block v. North Dakota, ex rel. Board of Univ. & Sch. Lands*, 461 U.S. 273, 277-78, 280-86 (1983). Observing that Congress had enacted a scheme which waived the United States' sovereign immunity in quiet title actions, *see* Quiet Title Act of 1972, Pub. L. 92-562, 86 Stat. 1176, the Court declined to sanction the use of a fictional suit against federal officials. *See* 461 U.S. at 284-86.

ment of just compensation does not provide an adequate remedy when Indian lands are the subject of a taking (*see* Pet. App. 17a n.8 ("states cannot provide a remedy for the taking of Indian lands that are held pursuant to federal law")), support the sanctioning of a fictional suit against the State's officers to circumvent the State's Eleventh Amendment immunity. Even if this a correct statement of the law, it is irrelevant to the resolution of this title dispute. Here, the Tribe can test the validity of Idaho's title in the state courts, subject to review by this Court. The availability of this remedy, which would provide the Tribe with full relief, renders unnecessary the court of appeals' sanctioning of a suit against the State's officials.

B. The Exercise Of Federal Court Jurisdiction Over The Tribe's Claims For Declaratory And Injunctive Relief Would Violate Equitable Principles And Could Cause Grave Harm

Asserting that "we may not decline jurisdiction to the extent that it exists," the court of appeals held that *Ex Parte Young* requires a federal court to exercise jurisdiction over the Tribe's claims for declaratory and injunctive relief. Pet. App. 22a-23a. The court of appeals' holding rests, however, on the erroneous premise that a federal court lacks discretion to refuse to hear the Tribe's claims for equitable relief. As this Court has recognized, a suit brought under the *Young* doctrine remains subject to traditional equitable principles, which in a proper case may require a federal court to decline to exercise its jurisdiction. *See Younger*, 401 U.S. at 43-46, 53-54; *Fenner*, 271 U.S. at 243-44; *see also Green*, 474 U.S. at 72 ("[t]he propriety of issuing a declaratory judgment may depend upon equitable considerations"). The Tribe's

suit is an especially inappropriate case for the exercise of federal equity jurisdiction; the granting of the Tribe's claims for declaratory and injunctive relief would be inconsistent with the fundamental purpose of equity jurisdiction and could well result in there never being a conclusive resolution of this dispute.

As Justice Story explained in the leading treatise on equity practice, it is

> the common expression that courts of equity delight to do justice, and not by halves. And hence, also, it is a general rule of equity . . . that all persons materially interested, either legally or beneficially, in the subject-matter of the suit, are to be made parties to it, either as plaintiffs or as defendants, however numerous they may be, so that there may be a complete decree, which shall bind them all. By this means the court is enabled to make a complete decree between the parties, to prevent future litigation by taking away the necessity of a multiplicity of suits, and to make it perfectly certain that no injustice is done, either to the parties before it or to others who are interested in the subject matter . . . .

Joseph Story, *Commentaries on Equity Pleadings* § 72 (10th ed. 1870) (quoted in 1 C.L. Bates, *Federal Equity Procedure* § 39, at 41-42 (1901)); *see also Gregory v. Stetson*, 133 U.S. 579, 586 (1890) (quoting *id.*).

It is thus the rule that "both the legal and equitable title should be before the court, and be disposed of and bound by the decree, so as to prevent future suits in regard to the same matter, either at law or in equity." 1 Bates, *Federal Equity Procedure* § 40, at

42. Correlative to this is the "inflexible principle" that "the court can make no decree between the parties before it which so far involves or depends upon the rights of an absent person that complete and final justice cannot be done between the parties to the suit without materially and directly affecting the rights of the absent person." *Id.* § 42, at 44. It is thus also the rule that a suit in equity should be dismissed if "some other Court of Equity is invested with the proper jurisdiction." Joseph Story, *Commentaries on Equity Pleadings* § 486, at 379 (2d ed. 1840).[4]

The exercise of federal court jurisdiction over the Tribe's claims for declaratory and injunctive relief would violate these fundamental principles of equity jurisprudence. Here, while a federal court's issuance of declaratory and injunctive relief would have the practical effect of granting the Tribe equitable title, it cannot adjudicate the State's interest in the disputed area. As the court of appeals acknowledged, "if the Tribe ultimately prevails on the merits of this case, neither Idaho nor the Tribe will hold unclouded title to the property." Pet. App. 22a. But this is precisely why the federal courts' exercise of equitable jurisdiction over the Tribe's claims would be improper. Courts of equity exercise their powers to remove clouds on title, not to create them. *See Simmons Creek Coal Co. v. Doran*, 142 U.S. 417, 449 (1892). Where, as here, the Eleventh Amendment denies the lower federal courts jurisdiction to render

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[4] It is, of course, also the rule that "[n]o suitor may ask from any judicial tribunal a form of relief which upon settled principles of law is detrimental to the public welfare." 1 Fred F. Lawrence, *A Treatise On The Substantive Law Of Equity Jurisprudence* § 48, at 77 (1929).

a decree adjudicating both a State's legal and equitable interests in property, a federal court should not resort to fictional pleading devices which can only lead to uncertainty and confusion.

To be sure, this Court formerly sanctioned the use of fictional suits against government officials in possession of real property as a means of overcoming the bar of sovereign immunity. *See Tindal*, 167 U.S. at 221-22; *Lee*, 106 U.S. at 218-21. The fictional device sanctioned in *Tindal* and *Lee*, the action of ejectment, was, however, an action at law. *See* Jonathan M. Landers *et al.*, *Civil Procedure* 367 (2d ed. 1988). As such, a court generally lacked discretion to refuse to proceed. But extending the rationale of these cases to authorize a federal court to hear the Tribe's claims for declaratory and injunctive relief against the State's officials, as the court of appeals did, is not only unnecessary, it is a prescription for uncertainty and additional litigation. In this regard as well, the court of appeals' holding violates traditional equitable principles.

As this Court's cases continue to recognize, the notion that a suit against the government's officials for the recovery of property is not a suit against the sovereign necessarily rests on the premise that the judgment does not estop the State from pursuing its claims. As the *Tindal* Court explained:

> It is said that the judgment in this case may conclude the State. Not so. It is a judgment to the effect only that, as between the plaintiff and the defendants, the former is entitled to possession of the property in question, the latter having shown no valid authority to withhold possession from the plaintiff; that the assertion by the defendants of a right to remain in possession is

> without legal foundation. The State not being a party to the suit, the judgment will not conclude it. Not having submitted its rights to the determination of the court in this case, it will be open to the State to bring any action that may be appropriate to establish and protect whatever claim it has to the premises in dispute.

167 U.S. at 223; *see also Lee*, 106 U.S. at 222. Consistent with this view, the Court in *Treasure Salvors* held that while the Eleventh Amendment does not bar a federal court from issuing a process ordering the arrest of property held by state officials, it nonetheless bars a federal court from adjudicating the State's interest in the property. *See* 458 U.S. at 687-88, 699-700.

As *Lee*, *Tindal* and *Treasure Salvors* demonstrate, the fictional suit against government officials for the recovery of property has the substantial limitation that it cannot bind the State itself. While it may have been tolerable to judicially sanction this type of suit when a sovereign had not waived its immunity and the remedy sought was legal in nature, to do so here, where the extraordinary remedies of declaratory and injunctive relief are sought, would violate the most fundamental principles of equity jurisprudence. The court of appeals' holding that the Tribe can seek these remedies notwithstanding that it would result in neither the Tribe nor the State holding unclouded title (*see* Pet. App. 22a), would turn the disputed area into a no man's land. It would create uncertainty and prompt years of additional litigation.

Indeed, because the exercise of federal jurisdiction in a suit such as this one is necessarily incomplete, it presents a very real possibility that the dispute

may never be definitively resolved. As the court of appeals recognized, a judgment in the Tribe's favor against the state officials cannot bind the State (though it nonetheless conveys all the incidents of equitable title). The State would be well within its legal rights to bring suit to quiet its title. And the State would be well within its sovereign prerogative to bring its suit in its own courts, which are bound to follow only the determinations of federal law made by this Court and not those of the lower federal courts.[5] At most the State could obtain a judgment "quieting its title" which, at its core, conflicts with, but cannot supersede, the judgment rendered by the federal courts.

The existence of these inconsistent judgments could well result in a consequence far more serious than "neither Idaho nor the Tribe . . . hold[ing] unclouded title to the property." Pet. App. 22a. Indeed, it is potentially a prescription for anarchy as the Tribe, under the authority of the federal judgment, asserts the right to exclude members of the public from the use of the disputed area while members of the public, under authority of the state judgment, assert their right to use the disputed area. And because state officials may very well have been enjoined from enforcing state laws in the disputed area, *id.*, there is an evident potential for confrontations which breach

[5] In bringing such an action, the State might well have to contend with years of additional litigation regarding whether the federal court's injunction restrains its officials from prosecuting a suit to vindicate the State's title. *See* Opp. App. 12a-14a (Tribe's Complaint ¶¶ 35 & 39; seeking to enjoin Idaho's officials from "taking any action in violation of the plaintiffs' rights of exclusive use and occupancy, quiet enjoyment and other ownership interest").

the peace. Absent this Court granting review and vacating one of the inconsistent judgments, the dispute may never be definitively resolved.

As the foregoing demonstrates, the lower federal courts' exercise of jurisdiction over the Tribe's claims for declaratory and injunctive relief cannot provide a complete resolution of this title dispute. Rather, such an incomplete adjudication is likely to prompt additional litigation and cause perpetual uncertainty. The exercise of federal jurisdiction thus presents a very substantial likelihood of causing irreparable harm to both the Tribe and the State.[6]

The Constitution granted federal courts equitable powers to remedy irreparable harm, not to create it. Because the exercise of federal court jurisdiction

[6] In contrast to a suit brought by a Tribe, the United States can bring suit on a Tribe's behalf against a State in the federal courts to quiet title. *See United States v. Minnesota*, 270 U.S. 181, 193-95 (1926). In such a suit, a federal court can adjudicate the State's interest in property and render a complete decree. *See id.* This is because the States surrendered their immunity from suit by the United States as part of "'the plan of the convention.'" *Blatchford*, 501 U.S. at 781 (quoting *Principality of Monaco v. Mississippi*, 292 U.S. 313 (1934) (quoting The Federalist No. 81 (A. Hamilton))). The States made no such surrender with respect to suits brought directly by Indian Tribes. *Id.* at 781-82.

In this respect Indian Tribes, while retaining some attributes of sovereignty, are no different than individuals who cannot bring a quiet title action against a State in the federal courts absent the State's waiver of its Eleventh Amendment immunity. *See, e.g., Treasure Salvors*, 458 U.S. at 699-700. By operation of the relevant constitutional provisions, persons aggrieved by a State's deprivation of property must generally pursue their claims in the state courts. *See Williamson Co. Reg. Planning Comm'n v. Hamilton Bank*, 473 U.S. 172, 194-200 (1985).

over the Tribe's claims for declaratory and injunctive relief violates fundamental principles of equity jurisprudence, the Tribe must pursue its quiet title action in the Idaho courts, whose doors are fully open to it and whose judgments are reviewable by this Court.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

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